THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.26491 OF 2005

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ORDER:

This Writ Petition is filed questioning the auction notification dated 11.11.2005 issued by the 2nd respondent-Cosmos Co-operative Bank Limited, contending that the same is contrary to Rule 8 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2002 (for short "the Rules").

The petitioner- Companies who are engaged in manufacture of multi-layer polyfilms, availed loans from the 1st respondent - Bank offering security of both movable and immovable properties. It is not in dispute that the petitioners committed default in repayment of the loan amounts. In the circumstances, the 1st respondent-Bank issued notice dated 29.01.2003 informing the petitioners about the outstanding balance against their loan accounts and calling upon them to repay the same failing which legal action would be initiated as per the terms and conditions in the sanctioned letter. Since there was no response, the 2nd respondent issued notice dated 30-04-2005 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") calling upon the petitioners to pay the amounts due within sixty days, failing which action would be initiated in exercise of the powers conferred under Section 13 of the Act against the secured assets.

The petitioners state that having received the said notice, they made a representation to the respondents seeking some more time to settle the dues and also expressing their willingness for one time settlement. However, the respondent-Bank without considering their request, by letter dated 26-7-2005 intimated the petitioners that they are proceeding further as per the provisions of the Act. It was followed by a public notice in Eenadu local edition dated 12.11.2005 for sale of moveable and immovable properties of the petitioners to be held on 13.12.2005. The said sale notice is under challenge in this Writ Petition primarily contending that there was no publication of possession notice under Section 13(4) of the Act as well

as the impugned sale notice dated 12.11.2005 as required under the provisions of the Act and the Rules. It is also alleged that the reserve price of the machinery was not fixed with the help of the approved valuer following the procedure prescribed under the Rules.

The learned Senior counsel Sri P. Gangaiah Naidu appearing for the petitioners vehemently contended that the action of the respondents in not following the mandatory procedure prescribed under the Act and the Rules by giving wide publicity for the sale of the properties is arbitrary and illegal. The learned Counsel contends that the impugned action is deliberate and for extraneous reasons to sell away the valuable property of the petitioner-Companies for a throw-away price.

On behalf of the respondents, a counter-affidavit has been filed in which it is explained that the authorized officer of the respondent-Bank took physical possession of the property belonging to the 1st petitioner on 22.07.2005 and the property of the 2nd petitioner on 11.08.2005 under the cover of Panchanama. It is further stated that possession notice under Section 13(4) of the Act was published in Andhra Bhoomi, a vernacular English daily newspaper and Business Standard, English daily newspaper on 25.07.2005, so far as the 1st petitioner is concerned. Similarly possession notice in respect of the properties of the 2nd petitioner was published in Andhra Bhoomi and Business Standard newspapers on 12.08.2005. That apart, the said notices were also affixed on the premises of the petitioners and Security Guards were also appointed for the safe custody of the assets. Thus, the respondent has duly complied with the procedure prescribed under Rule 8 of the Rules. It is also explained that the approved Engineer of the respondent-Bank, who is also an approved valuer under the Act, has submitted his valuation report dated 29.07.2005 in respect of the properties of the petitioners 1 and 2 and the said valuation report was taken into consideration by the Bank while fixing the reserve price of the property in compliance with Rule 8 (5) of the Rules. Thereafter sale notice was published in two newspapers on 12.11.2005 in Eenadu (Hyderabad City Edition and Mahabobbnagar District Edition) and Deccan Chronicle. Hence the allegations of the petitioners that there was no wide publicity is incorrect and without any basis. It is further explained that on 13.12.2005 bidders who came to participate in the auction did not show any interest so far as the machinery is concerned on the ground that the reserve price fixed was 300 to 500 times more than the realizable

value of the machinery. So far as the immovable properties are concerned, highest price of 25.51 lakhs was offered, however, sale could not be completed in view of the interim orders passed by this Court. It is also pleaded that the 1st petitioner is liable to pay a sum of Rs.2,61,51,898/- and the 2nd petitioner is liable to pay Rs.1,72,85,282.45 Ps together with interest and that the realizable value of the property is not sufficient to discharge the said liability.

In view of what has been stated in the counter-affidavit, I am unable to accept the contention of the petitioners that there was no wide publicity as required under the provisions of the Act and the Rules. Possession notices under Section 13(4) of the Act were issued long back on 22.07.2005 which were not only published in two local dailies, but were also affixed on the premises of the petitioners. That apart, since the Security Guards were also appointed for the safe custody of the assets, the petitioners cannot plead that they were not aware of the possession notices for want of proper publication. So far as sale notices are concerned, admittedly, they were published in Eenadu and Deccan Chronicle newspapers which are the largest circulated newspapers in the State. The said procedure followed by the respondents is in accordance with Section 13 of the Act and Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002.

As rightly contended by the learned Counsel for the respondents, this writ petition filed at the fag end of the sale proceedings appears to be only an attempt to delay the proceedings. That apart, under Section 17 of the Act any person including borrower aggrieved by any of the measures under Sub-section (4) of Section 13 taken by the secured creditor may make an application to the Debts Recovery Tribunal having jurisdiction in the matter. In the light of such an efficacious alternative remedy available under the statute, the petitioners cannot maintain this writ petition straightaway under Article 226 of the Constitution of India.

Viewed from any angle, the Writ Petition is without any substance and misconceived. Accordingly, the same is dismissed. It is needless to mention that the interim order dated 12.12.2005 shall stand vacated. No costs.

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(G. ROHINI, J.)

March 2, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.26491 OF 2005

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March 2, 2006.

Between:

Sri Vijayalakshmi Polyfilms Pvt. Ltd.,

Plot No.47/1, Kothur, Nandigam Gram Panchayat,

Mahaboobnagar District, represented by its

Managing Director, Mr. K.V. Rao and another. .. Petitioners.

And

The Cosmos Co-operative Bank Limited,

Hyderabad Branch, 3-5-798,

Pratima Schalass, Street No.8,

Hyderaguda, Kingkoti, Hyderabad and another. .. Respondents.

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